IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1079 of 2007

Ashok @ Sakkarai .. Petitioner

Vs

1. The Secretary to Government,
   (Home), Prohibition & Excise Dept.,
   Fort St. George, Chennai-9.

2. The Commissioner of Police
   Greater Chennai, Egmore,
   Chennai 8. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.A.D.Jagdish Chandra

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

Petitioner has challenged the order of detention dated 12.2.2007, passed against him by the second respondent in 48/BDFGISSV/2007, branding him as 'Goonda' under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2. On the basis of the complaint lodged by one Idayadullah, that on 13.1.2007 at about 18.00 hours, the detenu along with another wrongfully restrained him and threatened at the point of knife to hand over his money and when refused, beat him and took away cash of Rs.405/- and also snatched his wrist watch and that when the public came to his rescue on hearing his hue and cry, the detenu hurled the soda bottles against the public, which scattered all over the road and thus, created terror and panic at the spot and fled from the scene, a case was registered in Crime No.33/2007 on the file of J.9 Thuraipakkam Police Station, for offences punishable under Sections 341, 392, 427 and 506(2) IPC. During investigation, the detenu was arrested and sent to Court for judicial remand.

3. Taking into consideration the above said ground case as well as eight adverse cases on the file of same police station, viz., in Crime Nos. 832/2004 for offences under Sections 457, 380 IPC., 943/2004 for the offence under Section 380 IPC., 948/2004 for offences under Sections 457, 380 IPC., 19/2005 for offences under Sections 454, 380 IPC., 5/2005 for offence under Sections 457, 380 IPC., 987/2006 for the offence under Section 379 IPC., 1224/2006 for offences under Sections 341, 326, 506(2) IPC. and 12/2007 for the offence punishable under Section 302 IPC., the second respondent, having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a 'Goonda'.

4. The main contention of the learned counsel for the petitioner is that when a specific plea has been taken by the detenu in his representation dated 20.3.2007 presented before the Advisory Board that he was taken into custody by the police even on 12.1.2007 and that he was produced before the Court on 16.1.2007 for judicial remand in connection with Cr.No.12/2007 and in the meanwhile, the ground case had been foisted on him, the Government has not considered the said plea while passing the rejection order dated 10.4.2007, which vitiates the impugned order of detention.

5. With reference to the contention of the learned counsel for the petitioner, we have verified the records. It is seen that the detenu had given a representation dated 20.3.2007 stating that he was taken by the police on 12.1.2007 at 8.00 a.m. and was produced before Court on 16.1.2007 for judicial remand in Crime No.12/2007 and in the meanwhile, the ground case had been registered against him in Cr.No.33/2007. When such a specific plea has been taken by the detenu, a duty is cast upon the State to clarify the same while passing the rejection order dated 10.4.2007, more so, when his all other contentions had been touched upon, which in our view, vitiates the order of detention.

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In the result, the Habeas Corpus Petition is allowed and the impugned detention order is set aside. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sra

To

1. The Secretary, State of Tamil Nadu,
   Home, Prohibition & Excise Department,
   Fort St. George, Chennai-9.

2. The Commissioner of Police
   Greater Chennai, Chennai 8.

3. The Superintendent,
   Central Prison, Puzhal, Chennai.

4. The Joint Secretary to Government,
   Public (Law and Order)
   Fort St.George, Chennai -9.

5. The Public Prosecutor
   High Court, Madras.

1 cc To Mr.A.D.Jagadish Chandira, Advocate, SR.66522.

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MA(CO)
RVL 21.11.2007

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